

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

COALITION FOR TJ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 1:21-cv-00296-CMH-JFA
	)	
FAIRFAX COUNTY SCHOOL BOARD,	)	
	)	
Defendant.	)	

**DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION FOR LEAVE TO FILE  
UNREDACTED MEMORANDUM AND EXHIBITS UNDER SEAL**

Pursuant to Local Rule 5 and the Stipulated Protective Order (Dkt. #62), Defendant Fairfax County School Board (“the School Board”) respectfully files this Response to Plaintiff’s Motion for Leave to File Unredacted Memorandum and Exhibits Under Seal (Dkt. #105), and states as follows:

1. On August 31, 2021, the Court entered the Stipulated Protective Order (Dkt. #62) (“the Protective Order”) which allows the parties to designate as “Confidential” any documents that a party:

reasonably and in good faith believes constitutes or discloses information not available to the public and that constitutes or discloses : (1) educational or scholastic records of any individual; (2) personnel or employment records of any person; ... (5) testing-related material, scoring criteria, or related evaluation material whose disclosure could provide a competitive advantage in the Thomas Jefferson High School admissions process; or (6) other information, not available to the public, that would subject a party or third party to annoyance or embarrassment, if the party or third party can demonstrate a particular and specific need for protection from significant harm.

2. Plaintiff's Motion to Seal proffers 15 exhibits (Exhibits A through O) to its summary judgment brief, consisting of documents produced by the School Board in discovery and designated "Confidential" under these provisions of the Stipulated Protective Order. Plaintiff has also submitted its summary judgment brief that redacts those portions that quote or reference the "Confidential" material.

3. The School Board does not seek to seal the vast majority of the information at issue. Specifically:

- a. The School Board does not seek to seal any of Exhibits B through M.
- b. The School Board does not seek to seal any portion of Plaintiff's unredacted summary judgment brief.
- c. The School Board seeks to seal only: Exhibit A; one page of Exhibit N; and certain data on Exhibit O to Plaintiff's memorandum.

4. Exhibit A is a 915-page printout of a spreadsheet produced by the School Board during discovery that contains non-public information regarding students' applications to the Thomas Jefferson High School for Science and Technology (TJ) for the classes of 2020-2024. While students are not identified by name, the file shows each applicant's race, gender, and middle school; whether the applicant qualified for the Free and Reduced Price Meal program, was a English Language Learner, or had an Individualized Educational Program under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*; and whether the applicant was eligible for admission, withdrew, was offered, was not offered, or waitlisted for admission. Where the number of students in a category is very small (e.g., less than 10 students), "a

reasonable person in the school community” may be able to use the information to identify particular students and the results of their applications with “reasonable certainty,” 34 C.F.R. § 99.3, rendering the document an “education record” under the Family Educational Rights and Privacy Act (FERPA) and a “scholastic record” under Va. Code § 22.1-289. Due to the size of the spreadsheet, redaction of this exhibit is not practicable.

5. Exhibit N is a 61-page exhibit containing excerpts of the deposition of the Director of Admissions for TJ, Jeremy Shughart, and seven exhibits marked at his deposition. Of these 61 pages, the School Board seeks to redact a single page, specifically Shughart Deposition Exhibit 15. This document is identical to Exhibit 6 to the School Board’s summary judgment brief and for which the School Board has a pending motion for leave to file under seal (Dkt. ##113). As explained in the School Board’s memorandum in support of that motion, this document is a chart that shows, by each school and by each class year, the numbers of students who applied, who advanced to the semifinal stage of the process, and who were admitted to TJ for each of the Classes of 2020 through 2024. *See* Dkt. #114. Because the information contained is broken down by year and by middle school, many of the numbers include data about very small groups of students. *Id.* Where the number of students reported with respect to each middle school is very small (e.g., less than 10 students), “a reasonable person in the school community” may be able to use the information to identify particular students and the results of their applications with “reasonable certainty,” 34 C.F.R. § 99.3, rendering the document an “education record” under FERPA and a “scholastic record” under Va. Code § 22.1-289. Accordingly, the School Board has consistently maintained this chart as confidential under federal and state law.

6. Exhibit O contains a series of emails involving a member of the School Board and FCPS employees pertaining to TJ Class of 2024 admissions, specifically the number of admitted students who identified as Black. Because that number was fewer than 10 students, the School Board has consistently treated this data as FERPA-protected information and has never publicly released the exact number or relative proportion of the admitted class. The School Board seeks to seal only the data showing the exact number of students and the proportion of admitted class. A copy of Exhibit O with these redactions is attached as Exhibit 1 hereto.

For all of these reasons, the School Board hereby requests that the Court allow Exhibit A; one page of Exhibit N; and certain data on Exhibit O, to Plaintiff's memorandum to be filed under seal. A proposed Order is attached as Exhibit 2 hereto.

Respectfully submitted,

FAIRFAX COUNTY SCHOOL BOARD

By: /s/

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*Counsel for Defendant*

## **CERTIFICATE OF SERVICE**

I hereby certify that on December 10, 2021, I electronically filed this document with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to counsel of record for all Parties.

By: /s/  
Sona Rewari (VSB No. 47327)